CONVEYANCE OF CERTAIN NATIONAL FOREST LANDS

HEARING

BEFORE THE

SUBCOMMITTEE ON FORESTRY, WATER RESOURCES, AND ENVIRONMENT

OF THE

COMMITTEE ON AGRICULTURE, NUTRITION, AND FORESTRY UNITED STATES SENATE

NINETY-SEVENTH CONGRESS

FIRST SESSION

ON

S. 705

A BILL TO AUTHORIZE THE SECRETARY OF AGRICULTURE TO CONVEY CERTAIN NATIONAL FOREST SYSTEM LANDS, AND FOR OTHER PURPOSES

OCTOBER 22, 1981

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CONVEYANCE OF CERTAIN NATIONAL FOREST LANDS

THURSDAY, OCTOBER 22, 1981

U.S. SENATE,
SUBCOMMITTEE ON FORESTRY, WATER RESOURCES, AND ENVIRONMENT,
COMMITTEE ON AGRICULTURE, NUTRITION, AND FORESTRY,
Washington, D.C.

The subcommittee met, pursuant to notice, at 10:22 a.m., in room 2221, Russell Senate Office Building, Hon. S. I. Hayakawa (chairman of the subcommittee) presiding.

Present: Senator Hayakawa.

STATEMENT OF HON. S. I. HAYAKAWA, A U.S. SENATOR FROM CALIFORNIA

Senator HAYAKAWA. The Subcommittee on Forestry, Water Resources, and Environment of the Senate Agriculture Committee will come to order to discuss Senate bill 705.[1]

Today this committee will hear testimony on S. 705, the so-called small tracts legislation introduced by my colleague, Senator Domenici. The purpose of this bill is to authorize the Secretary of Agriculture to convey certain national forest land when he determines it to be in the public interest to do so.

Under S. 705, three kinds of small land parcels would be eligible for conveyance: (1) irregularly shaped tracts of 40 acres or less among mineral patents which cannot be practically administered; (2) tracts of 10 acres or less which are innocently occupied by private parties because of surveying and title errors; (3) road rights-of-way owned by the United States but which are no longer needed.

At present, land exchanges are the only existing authority to solve the conveyance problem; however, land exchanges often prove to be time consuming and expensive, requiring environmental impact statements and cultural resource inventories. Costs can range from $8 to $60,000 for such activities; whereas, the land involved may have a value of only $500 an acre.

Alternatives to exchanges, such as court decisions and private legislation introduced for individuals by their Congressmen are usually expensive, time consuming, and often complicated. S. 705 will help streamline the entire conveyance process by giving the Forest Service the authority to resolve the above categories within the Forest Service itself.

[1] See p. 31 for a reprint of S. 750 with accompanying staff explanation.

At a time when our courts are congested and Congress is overburdened, I support this in-house method of solving such a tremendous problem, and I am delighted that this committee is able to consider such practical legislation.

It will be a pleasure next to hear from Senator Domenici, my distinguished colleague, with his statement on the subject.

STATEMENT OF HON. PETE V. DOMENICI, A U.S. SENATOR FROM NEW MEXICO

Senator DOMENICI. Thank you very much, Mr. Chairman. Before I testify, could I ask you, Mr. Chairman, to permit me to introduce in the record a resolution of the Western Professional Land Surveyors? They support the measure and indicate, within the confines of the resolution, the nature of the problem.

I would also introduce into the record letters from the New Mexico Cattle Growers Association, the Realtors Association of New Mexico, and the State of New Mexico Commissioner of Public Lands expressing their concern and their support for S. 705, and a resolution by the president of the local realtors in the most obvious area of dispute in New Mexico. Probably when we are finished this boundary problem will be rampant in my State, but it came into real focus in the county around the City of Alamogordo, N. Mex. and in Ruidoso, a recreation area a few miles away from there. Also, for the record, there are detailed letters from the area signed by a number of people that I think clearly gives practical examples for you and your staff of the type of problem we have.

If I could have your permission to introduce those first in the record, it would be very helpful, Mr. Chairman.[1]

Senator HAYAKAWA. We will be glad to have those in the record. They sound like useful documents, indeed, especially the document involving the practical points.

Senator DOMENICI. Individual people.

Mr. Chairman, since I am going to have to leave as soon as you are finished with me to attend a meeting with Majority Leader Baker, I want to take this opportunity to introduce Charlene Ward to you, Mr. Chairman. She is from Alamogordo, N. Mex. She is here because she is from that county with the problem and she is also a member of the New Mexico State Land and Title Association. And again, from the practical standpoint, I think those in the field that deal with titles would conclude that someone who is in the title and abstract business would have some very practical advice for the committee. She also happens to be co-owner of an abstract company in the area. She is president-elect of the Land Title Association in New Mexico, and she serves on a public land survey steering committee of concerned New Mexicans. This is a committee that was formed, Mr. Chairman, when this problem reached a peak some few months ago, and I think you and your staff will find her testimony very helpful.

I would like to introduce her, and then she will testify after the Government witnesses, as I understand it.

Senator HAYAKAWA. It is a pleasure, Ms. Ward, to welcome you to the committee.

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[1] See p. 17 for the prepared statement and additional material supplied by Senator Domenici.

Senator DOMENICI. Now, Mr. Chairman, I have a prepared statement, but I think what I will do, with your permission, is ask you to make the statement a part of the record and just talk with you for a bit, so I won't take too much of your time.

Senator HAYAKAWA. All right. Your prepared statement, Senator Domenici, will be made part of the record.[1]

Senator DOMENICI. Mr. Chairman, I could not do a better job of explaining my bill than you did in your opening remarks. Obviously, the United States has a common law that takes its vintage from England. As you know, that means that the doctrine of adverse possession, the normal means of resolving land disputes between individuals, is not available against the King. That's the derivation of the notion of our Federal land titles. And, consequently, you can be an individual citizen with a good color of title document, and you can occupy it for a hundred years. You can pay taxes for a hundred years. You can have a fence line that encroaches on the Federal Government's land for all of that hundred years. Then when it comes time to perfect that title and survey it out accurately and check the actual surveys, if there is any overage where you are on the King's land—King, in this case, being the United States of America—the doctrine that you cannot be greater than the King, even as to adverse possession and titles, just throws out your opportunity to perfect your title.

Now, we don't come here seeking to change that. While it seems rather arbitrary, I think when you look at the overall scope of things in America, we want to continue to maintain the doctrine that you can't adversely possess against the Federal Government.

Sometimes, Mr. Chairman, for you and me, it causes some very serious problems in the area of Indian land for instance. You should know that the law is quite certain that the titles to Indian land have the same protection as that King, because they are a derivative of the Federal Government. So we have many of the same problems with Indian land. We have an individual who might occupy on Indian land for a hundred years under color of title, and, if the Indian people get around to surveying and the house is on their land, it's too bad. In fact there is one recent decision that said they have to pay rent, even the third generation, for occupying that land under color of title and with no one trying to throw them off. Well, that is the basis of the problem.

Now we do have some laws that settle these disputes between municipalities and States and the Federal Government, and, indeed, some between private citizens and the Federal Government get settled. But it is obvious, with at least 50,000 disputes over small parcels, as you have indicated, either because of their peculiar geography or because they are 5- or 10-acre overlaps, it is going to be impossible without some flexibility vested in the Federal Government's land managers to resolve those kinds of cases.

This bill obviously proposes that the innocent property owner, and I think it is fair to add the innocent property owner who would otherwise be able to prove title if it was not against the Federal Government, and so long as it involves not more than 10 acres of land, will be able to negotiate the dispute. The land manager of the Federal Government will have the flexibility to negotiate out this

[1] See p. 17.

kind of situation on behalf of the private citizen and the Federal Government.

I think, and you described it well, that we can sit around here and invent a big judicial process to do it or we can put a lot more manpower in these agencies and then have 3,000 or 4,000 special bills a year for you and me to look at. But it seems to me that would be kind of ridiculous when we really have good land managers with good sense and we can set guidelines for them. We ought to just turn them loose for a few years to get thousands of these cases resolved. I think it is to the Federal Government's benefit, not only from the standpoint of the citizenry feeling better about it but also I really believe these longstanding disputes are not very productive, either from the Federal Government's standpoint or with the citizens' normal use of their land. Therefore, I think it is a thwarting thing rather than a prospering thing, and the sooner we get it out of the way, the better.

I would urge that you expedite the bill but, more importantly, I want to thank you for calling the hearings and for your kind remarks about Senate bill 705.

Senator HAYAKAWA. Thank you very much, Senator Domenici. I am very grateful, especially, for your historical remarks tracing the origins in British law of this particular peculiarity of our Federal law.

There is one question I would like to ask you. The Forest Service today is going to recommend that the limit of 10 acres in your bill be reduced to 5 acres. Do you have a comment on this?

Senator DOMENICI. Yes, I do, Mr. Chairman. And I think Charlene Ward will have something to say about it, too. I just give you a very practical answer: In my State we have already determined and found a number of situations where all the equity in innocence is on the side of the property owner, and the tracts are larger than 5 acres. With that confronting me, it is obvious that since I don't think the Federal Government is going to get in any way taken in this transaction because there is enough flexibility to require some payment, I just think we ought to solve the problem and not draw another arbitrary one that leaves us hundreds and hundreds of cases outside of it languishing, when in fact they have good color of title, they are innocent, they have been adverse possessors, and they have claimed the land.

I would prefer to give the broader flexibility even if the committee and the Senate decided that between 5 and 10 you had to have some additional burden of proof or some finding that it would not harm the Federal Government's total package of land, or the like. But a 5-acre limitation just won't solve the problems in New Mexico is the answer I would give you, Mr. Chairman.

Senator HAYAKAWA. Thank you very much. And you are due elsewhere?

Senator DOMENICI. Yes, I am, Mr. Chairman. Thank you very much.

Senator HAYAKAWA. Thank you.

Ms. Ward, would you like to comment on this same question while it is on our minds, as to why the 10-acre limit should not be reduced to 5 acres? Would you come and sit up here?

Ms. WARD. Thank you, Mr. Chairman. Yes, I would. At this point we truthfully do not know exactly how many of our claims involve between 5 and 10 acres of land. Certainly it would behoove us, if we are making a step forward, to consider those between 5 and 10 acres. As Senator Domenici has suggested, why cut them off now? We have a beginning and, if we can help the people concerned with between 5 and 10 acres, let's do it all at one time rather than eliminate them and have to come back later and find some other type of resolution for those parties.

Senator HAYAKAWA. Thank you very much.

I would like to call next upon Max Peterson, Chief, U.S. Forest Service, U.S. Department of Agriculture.

Ms. Ward, I will be calling on you again in a few minutes.

Mr. Peterson.

STATEMENT OF R. MAX PETERSON, CHIEF, FOREST SERVICE, U.S. DEPARTMENT OF AGRICULTURE

Mr. PETERSON. Thank you, Mr. Chairman. Since you have my statement, maybe you would like to accept it for the record, and I can just summarize it in the interest of time.[1]

Senator HAYAKAWA. I would be glad to do so. Your statement will be entered in the record, Mr. Peterson.

Mr. PETERSON. Mr. Chairman, I think the statement that you and Senator Domenici made certainly summed up the kind of problems we face. We would strongly urge enactment of S. 705, because we think it would provide a valuable means to improve the management of the national forests. We do wish to offer several amendments which we think would improve the bill. I would also point out, that an early version of the legislation was approved by the Senate in December 1980.

Each of these 50,000 cases that we estimate we have represents a specific problem which may be quite traumatic to the individuals involved who find themselves innocently occupying Federal land. So this is not only important, we believe, to speed up the resolution of landownership questions, but to resolve some very traumatic problems for the people involved.

It is difficult to explain to someone who has in good faith occupied what turns out to be Federal land why we can't work out a commonsense solution on the ground without a great deal of time and effort. We believe such a solution could be worked out that is in the best interests of both the individual and the Government.

We propose flexibility, for example, that would allow payment for the lands, or interest in the lands, or exchange, or a combination of those things; because, in some cases, the individual who wants the land might rather pay, others might rather exchange; we would like to leave that to a working out on the ground of what makes sense.

We have long tried to handle these kinds of problems through such remedies as special use permits or special bills. Those are many times not good long-range solutions, particularly the special use permits, because a person does not have title to the land. Special bills take a long time to enact and cost a lot of money and

[1] See p. 23 for the prepared statement of Chief Peterson.

time on both the part of the agency and the Congress. So it is our feeling that this bill would be a great help to us.

A couple of things that we are suggesting we believe are very important. As the bill is now written, it would limit these cases of erroneous surveys to those caused by Federal surveys. We believe this is unnecessarily limiting and would not allow us to deal with cases where erroneous private surveys caused the encroachments. We believe that the bulk of the cases out there may be a combination of problems with private and public surveys. To restrict it only to where the problem is with the public survey, we think would be because the individual private surveyor may have relied on the best corners that he knew about at the time. Those may turn out not to be the best corners after somebody does a detailed search. And so, even though his survey may be erroneous, technically it was based on the best information that was available. So we think it would be unduly limiting to limit it to just the Federal surveys.

We also believe that we should have an expedited way of handling the smaller kinds of cases. We are proposing that we use a different type of land transfer, which we have called an interchange but which really is an expedited kind of an exchange. It would apply to certain cases covered by the bill where we and the landowner would agree to interchange titles to land where the value is approximately equal. We can do that very specifically and very fast on the ground. It would not require us to do detailed appraisals, nor to do detailed additional analysis. There would be a need for a survey to establish where the land is so we don't create future problems. It offers us the advantage of being able to expedite these cases while avoiding the need for formal appraisal and processing procedures and also oversight procedures. We don't think Congress wants to see all of these. That would defeat the purpose of the whole thing, to have to also come back to Congress to look at each case.

We also propose an amendment to that section in S. 705 that would amend the act of December 4, 1967—the Sisk Act—pertaining to land exchanges with public school districts. Our amendment would seek to insure that the provision clearly applies to States, counties, and municipal governments. The act in question authorizes cash equalization in land exchanges. Many times in the exchange with a county or State, when the lands are appraised, we find out there is a difference in the value so that one party owes the other party something. Most of the time it is much easier to use cash equalization than it is to go out and find another piece of land. This would be important to a county or State that wants to acquire a piece of Federal land and would rather pay for it than go find another piece of land which they hope is of equal value to exchange. So we think that is an important streamlining.

On the question of the 5-acre versus 10-acre limit, Mr. Chairman, our analysis at the present time would be that about 95 percent of the cases would be covered by the 5-acre limit. But I don't feel strongly on the question of 5 versus 10 acres, and I don't think that we would object strongly to obtaining the 10-acre limit, providing it is made clear that we are not trying to move into the general exchange area with this. If we get very many cases that approach 10 acres, they could be worth a lot of money, and there could be

some question as to whether we should be doing it quite so expeditiously. But we don't feel strongly about the 10-acre limit, and I would be glad to hear what other witnesses have to say about the size of limit.

Thank you, Mr. Chairman.

Senator HAYAKAWA. Thank you very much, Mr. Peterson.

Mr. PETERSON. We have a couple of displays here that you might want to look at, that just shows you some of the typical problems.

Senator HAYAKAWA. We would be glad to see them.

Mr. PETERSON. Senator, this is a Wyoming case where there was an occupancy of the national forest area by private parties because of an erroneous survey. The green is the national forest land that we would now convey. This area now would become private, you see.

Senator HAYAKAWA. In other words, you would exchange the green for the pink.

Mr. PETERSON. Well, we may or may not. What we might do is work it out with the owners. See, these are different owners down here. The owners down here might like to just pay a few hundred dollars to pick up that property, because they would like to keep fences out there.

Senator HAYAKAWA. I see.

Mr. PETERSON. And they would like to occupy that for a long time. Now, if that whole thing was owned by one individual we might just be able to exchange out, you see.

Senator HAYAKAWA. Yes.

Mr. PETERSON. But when it is held by 50 individuals, you would have to deal with each. Because they have got improvements, and so on, and somebody doesn't want to lose their front yard over here, for example.

I merely show this to show that this kind of a change between what people thought the land looked like and the way it turns out to be—look at the number of problems that are created here, and you can imagine trying to deal with this in special bills, or this kind of thing. We would like to be able move in and handle that expeditiously.

Another kind of a case is the mineral fraction case. The blue, here, represents private land. And the black represents a mineral fraction that still technically belonged to the Government. By the time you get, in this case, houses on all of that blue land, you can imagine what sense it makes to have all that land that is technically public land mixed in there. Likely, if we go look on the ground, we will find that those have been, in fact, used by whoever had the surrounding private land. And there is no real practical way to manage them as a part of public forest land. So we would like to be able to just, either exchange or by expedited procedures, move out of those kinds of cases.

Senator HAYAKAWA. That is a good example.

Mr. PETERSON. Finally, as to the right-of-way question, many times we got deeded rights-of-way way back in the CCC period. Sometimes the deeded rights-of-way are well tied down by descriptions, and sometimes they are just defined as crossing a homestead entry survey or sometimes a quarter of a section. Technically, then, they provide a cloud on all the private land. We have no use for

the right-of-way by the time the surrounding private land has been subdivided and new road systems, and so on, are put in. And we would like to be able to get rid of this.

I remember one in your home State of California, in southern California, where an old motorized firebreak runs right through the north part of San Bernardino, which has $150,000 houses on it. And it is just described as going across that section. But it is a deeded right-of-way, technically. We would like to get rid of that and clear up that title question.

Senator HAYAKAWA. Thank you very much, Mr. Peterson.

Mr. Gene S. Bergoffen.

Oh, just a moment. I find I have some questions for you, Mr. Peterson.

Mr. PETERSON. Yes, sir.

Senator HAYAKAWA. On page 5 of your testimony you have proposed an amendment that would require the Secretary of Agriculture to consult with the Secretary of the Interior when conveying national forest system lands that contain leases for minerals or known or designated energy from mineral reserves areas. You also state that this amendment would be consistent with the USDA's existing authority regarding disposition of subsurface resources. I have several questions regarding this proposed amendment.

First, what would be the purpose of consulting with the Department of the Interior? And how do you propose that that consultation take place?

Mr. PETERSON. The idea here was that, in some areas, particularly if it was sizable acreage, there could be considerable mineral value. The consultation with the Secretary of the Interior really should be to say, "Do you have information on mineral values here that we should consider in the appraisal?" Frankly, I think there would need to be some kind of realism in this consultation so that we don't end up creating a bureaucratic nightmare on these half-acre and 1-acre tracts.

So I think it would be important that this is recognized in the legislation—to ensure that we create some kind of commonsense rules to not again build more bureaucratic machinery in trying to resolve these questions. And we would hope to do that with the Department of the Interior.

Senator HAYAKAWA. Well, would the Secretary of the Interior have a veto authority over the proposed land exchange?

Mr. PETERSON. The way this is written, he would not. The Secretary of Agriculture would just be required to consult with the Secretary of the Interior. In case of disagreement, I would expect you would agree that the two Secretaries, themselves, would work it out.

The Secretary of Agriculture, the way the legislation is written, is only required to consult; he is not required to get the approval of the Secretary of the Interior.

Senator HAYAKAWA. So you don't expect that this consultation will become a regulatory delay in the proceedings?

Mr. PETERSON. It would certainly be our intent that it not become a delay.

Senator HAYAKAWA. Yes.

Mr. PETERSON. I would have to confess to being concerned that some future regulation could be written so that it would be, but it would not seem reasonable in these couple of examples that we have shown of very small acreages.

Senator HAYAKAWA. Yes.

Mr. PETERSON. We wouldn't want this consultation to cost more money than the land that we are worrying about. So we would have to be careful to write the regulation, hopefully, to say it wouldn't be necessary on these small cases. But it does have the potential for mischief unless the regulations are written carefully.

Senator HAYAKAWA. Well, in the absence of this requirement to consult, would the Secretary of Agriculture normally consult with the Secretary of the Interior about such exchanges?

Mr. PETERSON. I am sure that, whether we had that provision in the law or not, we would set up a procedure for consultation on the larger acreages where there was known mineral values, because we would be required to look at the mineral estate where that is being exchanged. So I think that could be done with or without it being in the legislation.

Senator HAYAKAWA. Would it safeguard this whole matter from regulatory delays if I were to use the term "notify" rather than "consult"?

Mr. PETERSON. It might, although we probably would want to go beyond notification in some cases where there was likely to be high mineral values. But you would always have the question: Are you supposed to wait until you get some reaction to the notification? Again, in small sizes I am not sure you would need to do that.

I think, again, this would be a commonsense kind of thing on the ground. If we are in an area, talking about a total of 15, 20, or 25 acres being involved, and it is in an area where there is information that there might be high oil and gas values, we need to look at that. But remember in many of these cases somebody has a house or an improvement on this property, and in that case it would appear to be somewhat academic whether there might be minor mineral values there.

Senator HAYAKAWA. Mr. Peterson, under existing law does the Secretary of Agriculture now have the authority to transact land exchange arising from disagreements over boundaries between the national forests and private landowners?

Mr. PETERSON. Yes, we do. We have the authority to make a normal exchange. We don't have the authority to just accept money for it. And the exchange procedure is a fairly long procedure, involving appraisals, notification of counties, congressional oversight, and so on. So what we are really talking about here is expediting that process so that we can clear up things faster.

Senator HAYAKAWA. And it would result in considerable cost savings, too.

Mr. PETERSON. Yes, sir. We would expect that some of these 50,000 cases, with the procedures we have now, will probably be here 50 years from now. We would hope to clean up most of these 50,000 cases within a reasonable timeframe with this legislation.

Senator HAYAKAWA. You have suggested this bill should be amended to include interchanges. Could you provide for the committee in writing a comparison of the administrative proce-

dures associated with formal exchanges now used in those procedures associated with interchanges, if available?

Mr. PETERSON. We would be happy to do that, Mr. Chairman.

Senator HAYAKAWA. Thank you, Mr. Peterson.

I have here, as a Senator from California, an inadvertent trespass case in the Mammouth Mountain area of the Inyo National Forest. I want to leave this question with you, and I would like a written reply at your convenience, sir.

Mr. PETERSON. Thank you, Mr. Chairman. We will do that.

[The following information was subsequently received by the committee.]

Hon. S. I. HAYAKAWA,
Chairman, Subcommittee on Forestry, Water Resources, and Environment, Committee on Agriculture, Nutrition, and Forestry, U.S. Senate, Washington, D.C.

DEAR SENATOR HAYAKAWA: During our testimony on S705 on October 22, you asked that we provide a comparison of the administrative procedures associated with formal exchanges and procedures which would be associated with interchanges. Those are provided in the enclosures.

Also, you asked specifically if Dr. Charles Benz would qualify for acquisition of land in California now occupied by his cabin. Assuming S705 is amended as we recommended, we have determined Dr. Benz would qualify. It necessarily would be a sale at fair market value since we do not believe he has land to exchange or interchange. Dr. Benz would also assume the costs of the transaction.

We will appreciate you letting us know anytime we can be of assistance.

Sincerely,

GARY E. CARGILL,
(For R. Max Peterson, Chief).

Enclosure.

PROCEDURES FOLLOWED UNDER THE FORMAL EXCHANGE PROCESS

(As made under authority of the General Exchange Act of 1922 (42 Stat. 465, as amended, the Weeks Law of March 1, 1911 (36 Stat. 962, as amended) and the Federal Land Policy and Management Act of 1976 (90 Stat. 2743))

1. Proposal for exchange made by either Forest Service or the nonfederal owner.
2. Preliminary review of proposal by FS.
a. Determine if proposal meets FS land ownership plan.
b. Make appraisal estimate to give a rough idea of values.
c. Check conformance of proposal with Endangered Species Act.
d. Check conformance of proposal with National Historic Preservation Act.
e. Check conformance of proposal with E.O. 11988 (Floodplains) and E.O. 11990 (Wetlands).
f. Make preliminary mineral, oil and gas examination to determine whether these resources should be reserved or conveyed.
g. Notify State Clearing House per OMB Circular A-95.
h. Notify County Commissioners.
i. Notify informally the Congressional delegation (an "early alert").
3. Complete property appraisal. The appraisal is made either by FS or by a private appraiser under contract.
4. Complete environmental assessment by FS. This involves completing the analyses started in steps 2c, d, e, f. The assessment may lead to a formal Environmental Impact Statement, if, in the judgment of the decisionmaker, the proposed exchange will have a significant effect on the human environment. For General Exchange Act cases, these additional steps would be taken:
a. Notify Bureau of Land Management to receive serialization (a process to change the public land records).
b. Obtain report on mineral, oil and gas deposits from U.S. Geological Survey.
c. Obtain concurrence on FS recommendation regarding mineral disposition—to reserve to the U.S. or convey to nonfederal owner.
5. Provide public notification which involves publication in local newspaper for 4 consecutive weeks. This is done at the same time as step 4.
6. Obtain preliminary title policy to verify nonfederal ownership and obtain surveys.
7. Approve the exchange proposal. The value of the property being exchanged determines the organizational level at which approval takes place:

a. For General Exchange Act cases—
The Regional forester approves those up to $250,000 in value,
The Chief approves those over $250,000 in value.
b. For Weeks Law cases—
The Chief approves those up to $25,000 in value.
The Assistant Secretary of Agriculture approves those $25,000 and over.
8. Submit exchange cases to Congress for 30 calendar day oversight. Value of property determines oversight requirement.
a. General Exchange Act cases of $100,000 in value are submitted to the House Agriculture Committee.
b. Weeks Law cases over $25.000 in value are submitted to the House and Senate Agriculture Committees, as required by section 17(b) of the National Forest Management Act of 1976.
9. Notify public through local advertisement if case involves floodplains or wetlands. This is required by E.O. 11988 and E.O. 11990.
10. Handle appeals to proposed exchange, if any.
11. Nonfederal owner conveys deed to the U.S.[1]
12. Obtain final title policy.
13. Review final title policy by Office of the General Counsel, USDA.
14. Acceptance of title to the nonfederal land.
15. Conveyance of Federal land patent or deed to nonfederal owner.
16. Case completed and deed recorded. Bureau of Land Management notified to make adjustment in public land records in General Exchange Act cases.

PROCEDURE EXPECTED TO BE FOLLOWED UNDER THE INTERCHANGE PROCESS (AS WOULD BE AUTHORIZED BY S. 705)

1. Identification of suspected private party encroachment upon National Forest System lands.
2. Application for interchange made by encroacher; negotiation with Forest Service, including determination of approximate value.
3. Forest Supervisor determines in a written report if proposal made is consistent with the act and in the public interest.
4. The Regional Forester reviews and approves the interchange report.
5. Applicant provides title binder and obtains survey necessary to describe lands for deed.
6. Regional Attorney reviews title and makes final determination of consistency with act.
7. Deeds are prepared, exchanged, and recorded by Forest Service.
Note that because of anticipated small acreages involved, with minor environmental or other consequences, it would be possible to compress a number of steps normally required in the formal exchange process into a single step or action.

Senator HAYAKAWA. Thank you, Mr. Peterson.

Mr. Gene S. Bergoffen, assistant vice president, resource programs, National Forest Products Association. How do you do, sir.

STATEMENT OF GENE S. BERGOFFEN, ASSISTANT VICE PRESIDENT, RESOURCE PROGRAMS, NATIONAL FOREST PRODUCTS ASSOCIATION

Mr. BERGOFFEN. Thank you, Mr. Chairman. I am representing today the National Forest Products Association, and I would like to brief my statement and ask that the full statement with the attachment be included in the record.[2]

Senator HAYAKAWA. It will be done as you request.

Mr. BERGOFFEN. We appreciate this opportunity to give you the views of the forest products industry on S. 705. We concur with the objectives of the legislation and recommend that it be enacted. There has long been a need for a simple means to exchange or sell lands that are impractical or uneconomical to manage. S. 705 ad-

[1] In many cases, steps 11 through 15 are completed at the same time in an over-the-counter closure action.

[2] See p. 25 for the prepared statement of Mr. Bergoffen with accompanying attachment.

dresses this issue and provides a convenient approach to accomplish this purpose by authorizing use of a quit-claim deed.

We do have some minor suggested amendments, and these are outlined in the attachment to my statement. They are technical and clarifying in nature.

The forest industry supports an active program of land exchange between various owners, public and private, to alleviate problems resulting from scattered patterns of land ownership. Such exchanges should be carried out in a way that assures efficient management, including access to and full productivity of forest lands. S. 705 is designed to do just that. The bill, with these amendments, will promote good land stewardship on the national forests and reduce administrative burdens of mixed ownership, and we do recommend that it be enacted.

This concludes my statement, Mr. Chairman, and I would be glad to answer any questions you have.

Senator HAYAKAWA. I don't seem to have the amendments that you suggest. Do you have them, so that we will have the amendments to study?

[Pause.]

Senator HAYAKAWA. All right. Fine.

Mr. BERGOFFEN. Thank you, Mr. Chairman.

Senator HAYAKAWA. Thank you Mr. Bergoffen. We do have the amendments, so they will be put under scrutiny right away.

Ms. Charlene Ward, of the Alamogordo Abstract and Title Co., Alamogordo, N. Mex. and Guaranty Abstract and Title Co., Ruidoso, N. Mex.

STATEMENT OF CHARLENE WARD, CO-OWNER, ALAMOGORDO ABSTRACT AND TITLE CO., ALAMOGORDO, N. MEX., AND GUARANTY ABSTRACT AND TITLE CO., RUIDOSO, N. MEX.

Ms. WARD. Thank you, Mr. Chairman. I bring greetings from the State of New Mexico and appreciate very much your time in hearing our problems. I also bring you greetings from the title industry of the United States.

I have submitted a written report for the record, and I ask that it be included in the record in its entirety.[1]

Senator HAYAKAWA. It will be so done.

Ms. WARD. Thank you, sir.

I would like to bring to your attention certain aspects and explanations of what is going on in our far State of New Mexico and give you a little bit of a background about myself.

My name, of course, is Charlene Ward, and since 1965 my husband and I have owned two title companies, one in Alamogordo and one in Ruidoso, N. Mex. As Senator Domenici has stated, I am the president-elect of the New Mexico Land Title Association, and I serve on a public land surveying steering committee of concerned New Mexicans that, since 1980, has been addressing our problem here. Other members on that steering committee are: Dorsey Bonnell, our chairman; State Senator Charlie Lee; former State Senator Aubrey Dunn, who is currently a candidate for Governor of the State of New Mexico; Otero County Commissioner Bill Mershon;

[1] See p. 26 for the prepared statement of Ms. Ward.

Otero County Surveyor Quinton Daniel; and Wayne Stewart, president of the First National Bank, Alamogordo.

In appearing here, I wish to affirm the support of those whom I represent for S. 705. The overall problem has been well defined. I would like to bring some specific points to your attention, some things that perhaps have not been addressed, and tell you how people in New Mexico feel about these survey problems—people like the old rancher with his cattle.

At present we have many areas affected in Otero and Lincoln Counties—primarily in Otero. One man who has owned his property since it was patented to him in the early 1900's by the U.S. Government, prior to any surveying capabilities, has continually farmed his land and run a few head of cattle on it. He has laid out his boundaries as best he could, has fenced his land, and now is informed that his orchard and plowed field which are in this nice little valley don't happen to be his any longer but have been replaced by land on the side of a bushy mountain that is certainly not farmable and not conducive to any cattle ranching whatsoever.

Probably one of the most shocking examples I could give you, Senator, is that of Aubrey Dunn, a very reputable landowner in New Mexico and a member of our steering committee. Mr. Dunn owns land which was being resurveyed by the Forest Service which contracted individual private surveyors in the community to do the work for them. This particular surveying company entered on Mr. Dunn's property without permission and placed their surveying markers along a newly defined line set by the Government—which claimed a 30- to 40-foot strip of his property that suddenly did not belong to Mr. Dunn.

Mr. Dunn had sold off part of that property to another individual and suddenly was faced then with the fact that he had sold off land that maybe he didn't own. Needless to say, Mr. Dunn had the property surveyed long before the resurvey and thought he owned it. He had bought it from people who ordered surveys prior to his—as a matter of fact dating back to 1930—and they thought they owned it. But suddenly he didn't own the 30- or 40-foot strip that was in question.

In Otero County and Lincoln County we encompass a total of about 60,000 people. I personally have talked with many of the affected people and know of at least three dozen detailed cases of problems with surveying. We have one rancher in Glenco, N. Mex., which is in Ruidoso. Following a resurvey, he was told that the new survey was off some 8 feet onto his property. It doesn't sound like a lot; however, his fence extends along two or three sections of land. And it just happens that his water is within that 8-foot strip the Government now claims—and his cattle ranching depends on water. He is without water if that fence is changed, and he is going to have to move to another watering location which may be miles away. As you probably are aware, if you move your cattle too many miles, then you lose your good beef consistency.

This brings up a point I do think is vitally important, and that is the cost of fencing. To fence a three-strand barbed wire fence in New Mexico at the present time runs about $5,000 a mile on flat land. Now, moving 8 feet may not sound like a lot. But if you run very many miles, that old rancher can't afford to move that fence.

86-750 O—81——3

I mean, he is talking of perhaps up to $20,000 or more. And, even if he agrees to exchange property with the Federal Government, he will have to move that fence and it will cost him a lot of money.

Furthermore, responding to Mr. Peterson's remarks about an interchange, I can see that as a possibility as long as the property owner doesn't get stuck for all of the expense. But if you are going to hang it around the owner's neck—if he is going to pay for the survey and if he is going to pay for any fence moving and such alone—I really don't think that would be fair. I think there should be some sharing by the Government if we have interchange.

Senator HAYAKAWA. Is that kind of sharing possible by administrative agreement between the parties concerned, including the Government?

Ms. WARD. I don't know. I am not that well informed. But I would surely think that the Government could pay their part if the private owner can pay his part.

Senator HAYAKAWA. To ask you one more question: All of these were errors that were made in good faith at an earlier time?

Ms. WARD. Yes, sir.

Senator HAYAKAWA. There has been no attempt in any of these cases that you describe of deliberate intent to defraud the Government or the Government to encroach upon them?

Ms. WARD. No, sir.

Senator HAYAKAWA. So these are all accidents of history.

Ms. WARD. Yes. When you started surveying in the 1890's and the 1930's, and such, you were using chain surveys. You know, people who were chaining it across the mountains.

Senator HAYAKAWA. Yes.

Ms. WARD. And now you have very sophisticated equipment and even lasers, where you come to the top of this mountain and shoot your line to the other mountain over there. That is beautiful. But we didn't have that before and the older techniques are not as accurate. Survey discrepancies have resulted and there are problems. But the surveyors did pretty well in earlier times considering their technical limitations. and there certainly was no intent to defraud.

I would like to quickly show you a map of my county, Otero County. I have defined areas here that are being resurveyed, and they are the solid black lines. It is our understanding that those surveys have been completed and filed. The areas I have marked in red are surveys that are still pending finalization by the Government.

To look at one little square, Senator, really may not look like too much. But if you realize that all the people on all the sides of those sections are abutting landowners to Federal land and could be found encroaching on Federal land or Federal land could be encroaching on them, you begin to see the size of the problem. It is our understanding that the Government is resurveying some 1,700 miles in Otero County; they presently have finished only about 500. We really don't know what the rest of it is going to show.

When you ask me if we would be willing to drop from 10 to 5 acres, let me again emphasize that it would be premature to know what we are looking at. Some problems might involve a lot more

than 10 acres. So far, this has not been the case. But much more resurveying remains to be done.

Senator HAYAKAWA. So you prefer the additional flexibility provided by the 10 acre?

Ms. WARD. Yes, sir. I surely do.

Senator HAYAKAWA. Thank you.

Ms. WARD. Thank you, sir. It has certainly been a pleasure to have the opportunity to come and appear before you.

Would you like to make this map a part of the record? I have others.

Senator HAYAKAWA. I would like to. Yes, indeed.[1]

Ms. WARD. I would also be happy to furnish more information at any time. If anything in my statement needs verification, I will be more than happy to furnish it to you and to the rest of the committee.

Senator HAYAKAWA. Thank you, Ms. Ward.

Rosemary Craven, representing the National Inholders Association.

How do you do, Ms. Craven.

STATEMENT OF ROSEMARIE J. CRAVEN, WASHINGTON REPRESENTATIVE, NATIONAL INHOLDERS ASSOCIATION

Ms. CRAVEN. Good morning. Senator, I would like to submit my statement for the record and simply would like to make a few comments.[2]

Senator HAYAKAWA. Yes.

Ms. CRAVEN. As a representative of the Inholders Association, I have worked on a number of inadvertent trespass cases, and I have found that the Forest Service is often as frustrated with the inflexibility as the landowner. Though they are portrayed as villains, they would very much like to be able to have additional flexibility.

We regard S. 705 as important to their authorities and feel that it will help reduce the cost of land conveyances, disputes, and possible litigation. Regarding the amendment to limit it to 5 acres, we feel that this is a step forward, and to put that type of limitation on it we might find in the future that this inflexibility would become an additional obstacle and problem in resolving some of these cases.

I feel that that is really the thrust of what I had to say, and I thank you.

Senator HAYAKAWA. So you are voting with those who prefer the 10-acre limit to the 5?

Ms. CRAVEN. Yes.

Senator HAYAKAWA. All right. I am getting a vote on this. I think that Senator Domenici is in favor of the 10-acre limit as opposed to the 5. Ms. Ward certainly was. Mr. Peterson does not object to the 10-acre limit, and you support the 10-acre limit.

Well, that seems to be a very strong consensus in favor of that change.

Thank you very much, Ms. Craven.

Are there any further remarks from people here that are concerned? They are welcome at this point. [No response.]

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[1] The above-referred-to map has been retained in the committee files.

[2] See p. 28 for the prepared statement of Ms. Craven with accompanying attachment.

If not, the meeting is adjourned.

[Whereupon, at 10:52 a.m., the subcommittee adjourned, subject to call of the Chair.]

APPENDIX

STATEMENT OF HON. PETE V. DOMENICI, A U.S. SENATOR FROM NEW MEXICO

Mr. Chairman, I want to thank you and the Committee for allowing me today to come before you to testify on S. 705 which will authorize the Secretary of Agriculture to convey certain National Forest Lands to private individuals through an established procedure.

Currently the U.S. Forest Service is involved in thousands of boundary disputes with private landowners. There are many reasons for this growing number of boundary cases. Some disputes have come about because of mistakes by federal agencies and some have come about because of technological advances in equipment and methods of conducting land surveys.

These boundary disputes are found across the United States and in some cases involve third and fourth generation families living on the lands passed down to them by their ancestors. In other cases individuals have purchased title to land in good faith only to find out that the Federal Government now lays claim to some on that land. In the overwhelming number of cases the amount of land in dispute is less than 10 acres in size.

Laws regarding the transfer of public lands to states, municipalities and to private individuals are for the most part very clear and state very precisely the steps needed to be followed to execute such land exchanges. I believe that those laws are sufficient to address the issues that they were intended to address.

However, Congress in drafting these laws did not take into consideration this growing problem of small land tract disputes and those laws do not adequately address this issue. What we are left with for all practical purposes is the use of individual relief bills to solve these disputes. It would seem to me that S. 705 would provide the Forest Service with the flexibility to handle these small boundary disputes without additional legislation.

Many of the disputes in my State, New Mexico, came about because of new surveys of the National Forests. Using the most modern equipment and technological advances the ongoing survey has found that mistakes were made years ago and this resulted in improper boundary lines between Forest Service land and private land bordering on the National Forests.

In other cases re-survey could be finished and properly certified money ran out and it was stopped in mid-stream. Later surveys on private land were based on the uncertified monuments and again mistakes were made. This has compounded the problem we have in New Mexico and across the nation.

This growing problem has resulted in the loss of assets, and the clouding of property title of privately owned land, which had previously been perfected. Clearing these titles now involves waiting until all federal land resurveying and subdividing is completed and certified. If a discrepancy exists, a private land owner must seek relief through litigation against the Federal Government, or pay for a new private land survey to redescribe his title. In the meantime, no one can sell or exchange property with an insured title. In addition, the landowner may have been paying taxes on lands that will ultimately not be his.

Many landowners, given the current situation, are recognized by the Forest Service as innocent trespassers on Federal lands, but under existing law, have no recourse other than applying for a long-term lease of the lands in contention. The Forest Service has been very cooperative in granting special use permits to landowners so affected.

This legislation recognizes that in certain cases a landowner having no advance notice of the fact that his improvement encroached upon federal lands, and who in good faith relied upon an erroneous survey, title search, or other land description indicating there was no such encroachment, may acquire those parcels up to a maximum of ten acres or forty acres if interspersed with or adjacent to mineral patents.

Again, I would reiterate that what we are talking about are small tracts of land adjacent to National Forests and landowners who in good faith thought they had

proper title to the land in question, and through no fault of their own now find themselves in a Catch-22 situation. I know hundreds of citizens in New Mexico who think we need this legislation, including numerous organizations and businesses and associations, and in looking into this problem I have found literally hundreds of citizens in need of relief.

Again, Mr. Chaiman I thank you for this opportunity to testify today on this bill and I know the Senate Agriculture Committee will proceed to consideration of this bill in a forthright manner and help solve this growing problem across our nation.

[The following material on pp. 18–24 was submitted by Senator Domenici:]

RESOLUTION 80-05 PREPARED BY WESTERN FEDERATION OF PROFESSIONAL LAND SURVEYORS MEETING IN DENVER, COLO., SEPTEMBER 13-14, 1980

Whereas the U.S. Forest Service has raised the question regarding the scope of survey laws as they may pertain to the marking and posting of property boundaries as evidenced by letter attached; and

Whereas the intention of the U.S. Forest Service is to issue the contracts under technical rather than professional criteria; and

Whereas by this official's own evaluation these services would require field traverse, computation and marking of boundary lines; and

Whereas the Western Federation of Professional Land Surveyors Board of Directors, having reviewed the state's statutes, determine this to be within the scope of Professional Land Surveying in Federation States; and

Whereas this determination is based upon state statutes designed to protect the public; and

Whereas the establishment of these lines also determines the boundary lines of the adjoiner/s and is a matter of public welfare affecting the interest of every individual; now therefore be it

Resolved, That the Western Federation of Professional Land Surveyors does hereby oppose the contracting of these surveys to firms or individuals not registered as Professional Land Surveyors in the project state; and further

Resolved, That since the U.S. Forest Service proposal appears to circumvent state statutes, does therefore constitute a violation of States Rights; and further

Resolved, That Congressmen representing the states of this Federation be informed of this grave matter and be requested to cause an investigation on the action of this U.S. Forest Service Official; and further

Resolved, That the impropriety of said action be brought to the attention of other federal procurement officers and the G.A.O., by dissemination of this resolution, to these parties via congressmen of the Federation States; further

Resolved, That pursuant to said investigation this obvious attempt to circumvent states rights, the investigative findings, and resultant decree be made a matter of congressional record.

Adopted at the regular meeting of the Board of Directors of Western Federation of Professional Land Surveyors at Denver, Colorado, on the 14th day of September, 1980.

THOMAS W. HARVEY,
Secretary.

JAMES V. POTTER,
Chairman.

Representing the following State Societies: Alaska Society of Professional Land Surveyors, Arizona Professional Land Surveyors, California Land Surveyors Assoc., Professional Land Surveyors of Colorado, Idaho Assoc. of Land Surveyors, and Montana Assoc. of Professional Land Surveyors.

NEW MEXICO CATTLE GROWERS' ASSOCIATION FOURTH QUARTERLY MEETING DECEMBER 1, 1980—PUBLIC LANDS COMMITTEE RESOLUTION

Whereas, many land boundary problems have been created due to the development of highly accurate surveying techniques being applied on top of older less accurate surveys; and,

Whereas, when such problems occur between private land holders the principle of acquiescence applies; and,

Whereas, this principle does not apply in a dispute between the private land holder and the Federal Government; and,

Whereas, in any such dispute between the private landowner and the Federal Government, the private or State owner may be in trespass or lose property even though custom and agreement of many years standing has been acted upon, therefore, be it

Resolved, the New Mexico Cattle Growers' Association endorses and supports the effort now being made to seek Federal legislation to cause the principle of acquiescence to apply equally to the Federal Government.

REALTORS ASSOCIATION OF NEW MEXICO,
Santa Fe, N. Mex., November 6, 1980.

Hon. PETE DOMENICI,
U.S. Senate,
Washington, D.C.

DEAR SENATOR DOMENICI: Enclosed is information relating to re-surveying of U.S. Forest Service and B.L.M. land in New Mexico.

As a result of new surveys (in some instances, illegal) by the U.S. Forest Service and the B.L.M., many New Mexicans are finding the title to their long-held property to be "clouded", making re-sale a near impossibility. As you might guess, the legal ramifications and the legal expenses to individual landowners will be staggering.

A review of the enclosures will reveal that the policies of the U.S. Forest Service and the B.L.M. are creating monumental problems for thousands of New Mexico Citizens whose property touches Federal lands.

We fully endorse and support the enclosed Resolution of the Alamogordo Board of Realtors and we ask you to use your influence to bring about the drafting and passage of an Act of Congress which would state that: "any public land surveyor will adhere to procedures that do now exist between private owners concerning surveys, established lines, and do by their actions in such surveys support private ownership of lands. Previously perfected titles and boundaries established for a period of ten years shall have preemption over any change. Use of land in good faith shall have precendence over survey changes during all periods. Public Land Surveying shall enhance all titles, including adjacent privately owned properties. Any U.S. Government survey shall preserve titles, and permit established areas to remain absolutely unchanged."

With a copy of this letter, we also are asking that National Association of Realtors utilize its influence to assist New Mexico landowners whose private property rights are being threatened by federal agencies.

May we have your response in the near future?

Cordially,

DOYLE D. PARGIN,
President.
WILLIAM A. NEAL,
Executive Vice President.

STATE OF NEW MEXICO,
COMMISSIONER OF PUBLIC LANDS,
Santa Fe, N. Mex., November 3, 1980.

Re: Forest Survey—Lincoln National Forest.

MR. DORSEY BONNELL,
High Rolls Mountain Park, N. Mex.

DEAR MR. BONNELL: I want to thank you for giving me an opportunity to send members of my staff to the meeting in Alamogordo relative to the above problem.

As I understand it, the problems are as follow:

1. The BLM has, in the past, made an original survey of mountain lands, at which time they moved long established corners used by private owners, and thereafter left the survey they had performed "not approved" for a long period of time. On some occasions, they returned to resurvey the land and moved several of the monuments placed during earlier BLM surveys, causing great uncertainty. Many of these surveys are still unapproved. Private landowners in the immediate vicinity have no alternative but to use the BLM survey markers, whether or not they have been approved. The expense of initiating a private survey from the last approved marker is prohibitive in mountainous terrain.

2. Corners that have been long established are now determined by the BLM and U.S. Forest Service surveyors to be in error. Utilization of new, highly sophisticated laser equipment has interjected a level of accuracy not previously known. As a result, long established boundaries and markers have been recently determined to be erroneously placed. A product of this new level of accuracy is that private surveys that have been accomplished over a period of perhaps thirty, forty, fifty years, and have long been relied upon by private landowners, are now deemed to be

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inaccurate and not usable for purposes of establishing boundaries with the U.S. Forest Service.

3. Contract surveyors and employees of the U.S. Forest Service (and perhaps surveyors working for the BLM) have been consistently trespassing upon private land for purposes of conducting the new surveys. By the placement of new markers (placed during recent U.S. Forest Service contract surveys), the United States Government is in effect clouding the title to privately held land and implying a threat to adjust boundaries to the detriment of private landowners.

4. Because of these problems, which may be applied statewide in principle, I feel it would be inequitable to deprive the adjoining landowners of the property. I am willing to help in any way possible to solve these problems. In this connection, I concur with you and George Fettinger that Congressional legislation is probably the best solution, primarily because I do not think that the local officials have the authority to make concessions of the magnitude necessary to solve these problems. As a possible suggestion, perhaps a bill should provide that when such a survey is made and the markers remain upon the ground for a given period of time, there would be a conclusive presumption that the survey had been accepted. It would, in turn, make the physical markers upon the ground the controlling points for boundaries.

In short, please feel free to call upon me if you feel there is any assistance I may be able to render with regard to these problems.

Very truly yours,

ALEX J. ARMIJO,
Commissioner of Public Lands.

STATE OF NEW MEXICO,
COMMISSIONER OF PUBLIC LANDS,
Santa Fe, N. Mex., October 22, 1980.

Re: Forest Survey—Lincoln National Forest.

MR. DORSEY BONNELL,
High Rolls Mountain Park,
Cloudcroft, N. Mex.

DEAR MR. BONNELL: Upon my return to Santa Fe, I did some research of the law and found that the general state of the law is as I outlined it to be at the hearing—to the effect that once the Government has made a survey and that survey is accepted and third party interests have attached in reliance upon that survey, then the Government cannot change the survey and establish new markers upon the ground. Further, that the markers on the ground control over metes and bounds descriptions and acreage recitations.

As I understand the situation, in most cases, the position of the BLM surveyors is that the original survey made upon the ground was erroneous and never approved, therefore, the boundaries do not attach. The cases generally bear their position out. See annotations at 43 U.S.C. §751 et seq. This is also in line with the manual of surveying instructions of the U.S. Department of the Interior and is in line with my experience in similar cases in which I have been involved through the years.

In view of this, it is my opinion that the chances of prevailing in a lawsuit would not only be slim but the cost of litigation, which I am sure the U.S. Government would take all the way to the U.S. Supreme Court, would probably exceed the value of the land involved.

The matter seems to me to be one of equitable consideration which was brought on by the erroneous survey being made and the survey markers being placed upon the land and left there for several years without either approving or disapproving the survey, thereby inducing the local surveyors to rely upon them. In the absence of legislation, the local forestry officials and the BLM surveyors are without authority to make concessions of the magnitude necessary to solve the problem. As I see it, the only practical solution is as I suggested in my letter of October 10 which is that we should get a bill that would provide that when a survey is made and the markers remain upon the ground for a period of time with no decision being made, there would be a conclusive presumption that the survey had been approved.

Another facet of this is that there will be a multiplicity of suits involving not only the land surveyors, the title companies, the lending institutions, but all those individuals who might be in the chain of title. Therefore, the expense to the court system would far outweigh the expense of securing Congressional legislation.

Very truly yours,

WILLIAM O. JORDAN, *General Counsel.*

RESOLUTION

Whereas, the Ruidoso Board of Realtors recognizes the serious problems arising in the surveying or re-surveying of Public Lands, including but not limited to U.S. Forest Service properties, in Otero and Lincoln counties in the State of New Mexico;

Whereas, the Ruidoso Board of Realtors desires to make known to the Realtors Association of New Mexico and the National Association of Realtors the seriousness of the problem;

Whereas, the problem is defined as follows:

(1) The Bureau of Land Management in surveying or resurveying public property in New Mexico, have in fact, moved the original brass cap monuments at their discretion, said monuments having been moved in conjunction with survey which were, at a later date, found to be in error resulting in the movement of said original brass cap monuments a second time. Further, the BLM has performed surveys which have failed to be finally approved for many years. For example, one particular survey was first completed in 1968 and is still not accepted as final by the BLM.

(2) By virtue of new, more accurate equipment, (i.e., laser surveying equipment), direction and measurement of lines have been changed as to previously surveyed properties. This is true even where the previous surveys have stood as established lines for many decades.

(3) U.S. Forest Service crews and/or contractors under contract to U.S. Forest Service have trespassed upon private property, without permission, placed markers, and cut lines across private property. Such trespass has clouded titles previously perfected, including lands previously surveyed by leading licensed surveyors of the State of New Mexico.

Be it resolved, therefore, That the Ruidoso Board of Realtors support and request that the Realtors Association of New Mexico and the National Association of Realtors support the following request;

An Act of Congress which states that any public land surveyor will adhere to procedures that do now exist between private owners concerning surveys, established lines, and do by their actions in such surveys, support private ownership of lands. Previously perfected titles and boundaries established for a period of ten years shall have preemption over any change. Use of land in good faith shall have precedence over survey changes during all periods. Public Land Surveying shall enhance all titles, including adjacent privately owned properties. Any U.S. Government survey shall preserve titles, and permit established areas to remain absolutely unchanged.

Dated this second day of December, 1980 at Ruidoso, Lincoln County, New Mexico.

ALTON LANE,
President, Ruidoso Board of Realtors.

OCTOBER 15, 1981.

Senator PETER DOMENICI,
New Senate Office Building,
Washington, D.C.

DEAR SENATOR DOMENICI: In support of your Bill S. 705 we, a steering committee selected as the outgrowth of a public hearing held September 1980, in Alamogordo, New Mexico; do respectfully submit the following:

The public hearing referred to here-in-above was attended by approximately one hundred interested persons and their difficulties and concerns demonstrated the need for an investigation into the effect of Public Land Surveys on boundaries of properties adjacent to Public Lands. Our steering committee brought many cases to light and after our doing so, the U.S. Forest Service, Washington Office, has admitted 90,000 title claim cases throughout the United States existing on National Forest Systems lands. By our observation we would suggest there are many more cases than this, for those that they are officially aware in our area and those we have found that do exist is conservatively twenty to one ratio.

We have found that there have been basically three different ways in which these discrepancies between the New Public Land surveys and the old private surveys and boundaries have come about. 1. The unilateral moving of long established brass cap corners, without regard to the duration as to its original placement nor to the previous surveys made from such points, in the resetting of corners supposedly set in error. This has been done in our area wherein we believe the BLM's manual of Surveying Instructions 1973 have been overlooked, which read as follows: "The age and the degree to which a local corner has been relied on by all affected land owners may lead to its adoption as the best remaining evidence of the position of the original corner. (Section 6:25–28) We do have evidence of similar circumstances in northern New Mexico. 2. Surveys were begun by the Bureau of Land Management years ago (1968) yet were not finalized for years. (September 1981) Brass caps

were placed in 1968 without notification to the local public from B.L.M. concerning surveying, and the only records were kept in the Denver Office of BLM, and the local private claimants were unable to acquire information as to the newly placed markers, not finalized, yet different from the old original stone monuments. The public was placed in a position of not being able to perfect any other boundaries or verify those they had established years before. Inasmuch as the old stone monuments and new brass caps do not reconcile, this will in no doubt bring about further complications. Again we would believe that adherence to the BLM surveying Instructions of 1973 or perhaps those before these instructions would have prevented the possibilities of future difficulties to all concerned. However how do you correct what happened in 1968. 3. New surveys made with more sophisticated equipment, when brought together with previous diversity within public land surveys of record, such as the following, have been responsible for many difficulties. United States General Land Office Survey of 1895 and 1937 more particularly wherein a section line common to Section 2 and 3, Township 16 South Range 11 East N. M. P. M. has been shown to be at different angles from North, that when extended would cause a error of 64.65 feet and the length of this line is shown to be 31.02 feet shorter on one survey. Now we understand that the markers on the ground shall prevail, however when the survey in 1937 was made there has been an indication that lost quarter section corners were restored at that time, without surveys of local claimants having been sought, and thereby were set by strictly proportionate measurement. Now therefor the Survey of the Public Lands adjacent to this area, with the right of Eminent Domain have overlapped upon private surveys based on surveys made in the 1920's. Within the private sector Adverse Possession in such cases, would in all likelihood resolve the problem of boundaries, estalished for many decades. This form of circumstances lead to a difference within the subdivision of sections. Most particularly does this problem exist in mountainous and heavily wooded terrain. Mountainous terrain is difficult to survey as would be confirmed by the continued research of the U.S. Forest Service, to find better means of measuring lines within such terrain. After conducting many tests their results were considered to be an inadequate solution, and thus they sought a solution to their problem from NASA-Goddard, of which the laser-range pole was the outcome. According to the U.S. Forest Service "The Laser Range Pole has been in use for a few years and has proved to be effective and accurate method of establishing property lines at a resonable cost." In view of this we do not believe that the surveyors of yesterday with their equipment should be criticized however the results of their inability to accurately measure a line has proven to be disastrous to those that border public lands.

Because of these circumstances a great inequity to many of our citizens has caused them to lose the improvements and real property that they have owned and paid taxes on for many years. We did therefore come to the following conclusion. Our difficulties have arisen from the fact that surveying both in the past and present, is not an exact science and cannot be applied as such, for its very nature requires individual judgments of men, as an input toward its summation. With past and present discrepancies and todays divergent opinions brought into sharp focus by the more accurate equipment and methods employed, the private land owner is the victim. The victims were quickly made aware of the necessity in seeking a way in which their previously perfect title and boundaries as well as their assets could be restored with some assurance of permanency. The majority of our efforts have been at the federal level as various federal bureaus have taken the position as the courts have, that the so called "Eminent Domain Theory" would override any Adverse Possession acquired through acquiescence of the Federal Government. Because of this position so held and in the absence of an exact science of survey, in the absence of records of years past without discrepancies, we found those citizens adjoining public lands were for the most part subjected to a change in their boundaries and thereby a loss in assets. These citizens were therefore placed in the perplexing and difficult position of having to defend their previous perfected titles and boundaries, which were perfected in good faith and with the best available licensed surveyors and information, at the time of the transfer of their titles; some of such transfers and perfections having been concluded several decades prior to the new public land survey. Adverse Possession, the avenue of permanency of boundaries within the private sector, denied them. Those so involved were consequently left without a remedy other than proving the new Public Land Survey, made at considerable expense to the government, was wrong and in error. In light of their new equipment and the meticulous manner in which they carried out these new Public Land Surveys, it is doubtful they are inaccurate, even though the previously perfected claims perfected in Good Faith are not upheld by these new surveys. Now therefore, we have citizens of good faith without a remedy. Surely these victims can be

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afforded some remedy for their lost, and thereby our request for the support of your bill 705.

One such victim had settled his homestead, now adjacent to public lands, long before there were any surveys, and then when surveys were first completed (such as they were in stone monuments and etc.) did set the boundaries of his lands to the best of his ability and with what information that was then available. These boundaries are now being challenged by the new Public Land Survey, which sets new boundaries within the bottom of the canyon amid the orchard and plowed fields established in the 1880's and gives a similar sized portion of land to the owner on the back side of the place up a rugged brush laden hill side. The person that established this place was a pioneer to our part of the country and the canyon in which this small farm lies is named after the pioneer, one of the first on the West side of the Sacramento Mountains of Southern New Mexico. As evidence of these boundaries we can offer as evidence the fact that in September 1911, a Hydographic survey was conducted by James A. French the State Engineer at that time, and this survey shows this particular place with its various fields described by their crops and acreage. Lands of several canyons wherein water was to be found were shown in this survey, so as to determine the water rights due each owner. These persons or the present day owner are also entitled to some remedy as their boundaries were established in good faith and are not claiming more than they were entitled to have by virtue of their homestead. BLM instructions state Section 6-16 "It may be held generally that the entryman has located his lands in good faith if such care was used in determining his boundaries as might be expected by the exercise of ordinary intelligence under existing conditions."

We have heard some say that they too own a part of the Lincoln National Forest and they don't want anyone to dilute their interest. Well we the adjacent owners feel we own a portion of this great asset, and not just as an absentee owner but rather owners often required to take on some of the responsibilities of ownership for not only ourselves but for the absentee owners as well. So not only are we concerned about these new surveys taking land that have been considered private for decades but we are also concerned with the inadvertent means by which some of our interest in public lands are being given away. Specifically these are lands that have been used and known as public lands for years however now by the new public land surveys are outside the new boundary. Though the new survey shows them to be now private lands, by virtue of adverse possession through the acquiescence of the adjacent private land owner, we feel there is a distinct possibility that these rights through adverse possession, due the public are being denied by the lack of description of these lands and the knowledge of such acreage set before the public. We do feel that the give and take of public lands as caused by the new public land surveys would be similar in size should the acrage be determined. Therefore in our opinion, the land that is within the confines of 705 could certainly be offset by the enforcement of the possible rights of the public provided them under the auspices of adverse possession. At present the only persons aware of those lands being given away inadvertently, are the surveying crews and the recipient.

Again we support Senate Bill 705 and do believe that it would relieve many inequities, and does not dilute the interest of the public.

DORSEY BONNELL, *Chairman.*

Enclosure: List of members of Steering Committee.

Bill Mershon, Otero County Commissioner, Manager of Engineering Services for Otero County Electric Co-op., Cloudcroft, New Mexico.

Aubrey Dunn, Alamogordo Daily News Business Manager, Past Chairman of New Mexico State Senate Appropriation Committee, Alamogordo, New Mexico.

Charlene Ward, Alamogordo Abstract Company, President Elect of New Mexico Land and Title Association, Alamogordo, New Mexico.

Charlie Lee, State Senator of Lincoln and Otero Counties, Rancher, and member of the New Mexico Cattle Growers Association, Alamogordo, New Mexico.

Quinton Daniel, President of Daniel Engineering Company, Registered Professional Engineers and Land Surveyors, County Surveyor, Alamogordo, New Mexico.

Wayne Stewart, President of First National Bank, Alamogordo and member of the New Mexico Bankers Association, High Rolls, New Mexico.

Dorsey Bonnell, Artist and property owner, High Rolls, New Mexico. Chairman.

STATEMENT OF R. MAX PETERSON, CHIEF, FOREST SERVICE, U.S. DEPARTMENT OF AGRICULTURE

Mr. Chairman and members of the subcommittee, thank you for the opportunity to appear here today and offer the Department of Agriculture's views on S. 705, a bill that would authorize the Secretary to convey certain parcels of National Forest

System lands when it is determined to be in the public interest. We strongly urge prompt enactment of S. 705, as it would provide a valuable means to improve the management of the National Forests. We do wish to offer several amendments which we believe would improve the bill. I would point out that an earlier version of the legislation was approved by the Senate in December 1980.

The bill before you is nearly indentical to that earlier bill. It would allow the Secretary to either sell or exchange three specific kinds of National Forest System lands: (1) irregularly shaped tracts of 40 acres or less interspersed with or adjacent to mineral patents which have a current fair market value of not more than $150,000; (2) tracts of 10 acres or less encroached upon by improvements owned or occupied by private parties who had no advance notice that they encroached or would encroach upon the Federal lands and who in good faith relied upon an erroneous Federal survey, or an incorrect title search or land description; and (3) rights-of-way, reserved or acquired, substantially surrounded by private land and which are no longer needed by the United States. The bill would prohibit conveyance of any such tracts located within the National Wilderness Preservation System.

The Federal lands would be conveyed by quitclaim deed. The deed would contain terms and conditions necessary to insure protection of the public interest, including public access to the lands of the National Forest System. Payment for these lands would be in lands, interest in lands or cash payment equal to the fair market value of the lands conveyed. Determination of value would include the mineral estate when appropriate.

These small tracts of Federal land are scattered throughout the System. They are typically separate, isolated units having special management problems which make efficient administation difficult. Such problems include occupancy trespass, use as rights-of-way for access or utilities, and use, or sometimes inadvertent sale, by private developers or adjoining owners. Disposal under the conditions of S. 705 would be in the interest of the United States.

The bill would supplement our current authorities to convey National Forest System lands, including the General Exchange Act of 1922. It would allow us to minimize the cost associated with disposal of small tracts of land. Administrative remedies, such as special-use permits, currently used to resolve many of the problems, do not provide a satisfactory long-term solution to either the private landowner or the United States. Individual bills have been enacted in some instances; but, because of the cost and time normally required, it is not a practical or efficient way to resolve a large number of cases. The mineral fractions encompassed by this bill are residual Federal lands that remained after the patenting of mineral claims in the western States over the last century. Because of the manner in which the claims were located, the remaining Federal lands are of an infinite variety of sizes and shapes. Most of the surrounding lands, as well as the fractions themselves, are no longer held for their mineral values and are of little practical use for National Forest System purposes. Some have been for practical purposes incorporated into adjoining private lands which have been subdivided into vacation homesites, or similar, more intensive land uses. The bill prescribes a 40-acre maximum size for those fractions to be conveyed. We can resolve the mineral fraction problem within this limit. The bill also prescribes a maximum value of $150,000. We believe this limitation should apply as well to the other two types of tracts. We also believe the term "mineral patents" should be clarified to specifically refer to those lands transferred out of Federal ownership under the mining laws.

Our ability to promptly handle cases of encroachment, or good faith trespass, would be aided by S. 705. Encroachment occurs when improvements are constructed or are being used on a parcel of land acquired in good faith by a private party which is later found to be Federal land due to an improper property line survey or an error in the title or land description. The bill would limit these cases of improper surveys to those caused by Federal surveys. We believe this is unnecessarily limiting and would not allow us to deal with cases where erroneous private surveys cause encroachment. Such situations often occur when private lands adjacent to the National Forest are subdivided and sold. Private surveys creating the lot or subdivision may be found to be in error when the Federal land is surveyed and marked.

There are few known instances where a Federal survey has led to encroachment. We estimated a few years ago that there were 50,000 title claim cases existing on National Forest System lands, a major portion of which are believe to be good faith occupancy due to a faulty private survey. These "overlaps" of private onto Federal lands commonly involve less than 1 acre. We recommend that S. 705 be broadened to include those encroachment cases caused by private surveys. We also believe that such cases coming under the provisions of S. 705 should be limited to a maximum

size of 5 acres. This limit would encompass about 95 percent of the cases. Larger tracts should require more detailed consideration.

The road rights-of-way are narrow strips of Federal land or interests in land acquired across private land. Many were created as exceptions to homesteads to provide access to the homesteaded area or assure access to the remaining public lands. Some were purchased by the Government in conjunction with the work of the Civilian Conservation Corps. Many of these roads have long since been abandoned or were never constructed. The land is often "unofficially" incorporated into adjoining ownerships, causing various types of occupancy trespass. Two acres is the average size of the strips. Most of these cases occur in the West, especially in Montana, Wyoming, Idaho, and Arizona. Like the mineral fractions they cannot be effectively administered and should be transferred to private ownership.

In addition to several amendments, we have already discussed we would like to propose a substantive addition to the bill which we believe would greatly improve our ability to handle the conveyance of these small tracts.

As we evaluated the conveyance process that would be required to implement the provisions of the bill, we saw an opportunity to speed up the process for certain cases. This would involve use of a different type of land transfer which we call an interchange and which would be in addition to the bill's provision to sell or exchange the National Forest System lands. As we envision it, interchange, as would be used in this legislation, would be a special form of conveyance similar to exchange but without the rather elaborate administrative procedures normally associated with formal exchanges. In effect, it is an expedited form of exchange, and would thus avoid the attendant costs and time requirements. For example, a landowner involved in an encroachment situation on Federal lands could agree with the Government to interchange titles to the small parcel of Federal land being occupied and similar parcel of land, usually adjacent, which that person owns. Lands involved would normally be of about equal size and approximately equal value. This simple transaction would clear up the encroachment situation quickly and with minimal costs by avoiding the formal appraisal and processing procedures. The expense to the landowner would be limited to the costs of the survey, if any, and deed preparation and filing. Interchange would be a supplement to the regular land exchange process, applicable to some of the cases encompassed by S. 705 and subject to the bill's limitation on those conveyances. We believe it is an appropriate addition to the sale and exchange authority and recommend its inclusion in S. 705.

We also propose an amendment that would require the Secretary to consult with the Secretary of the Interior when conveying National Forest System lands that contain leasable minerals in known or designated energy or mineral resource areas. This amendment is consistent with USDI's authorities regarding disposition of subsurface resources.

Section 5 of the bill deals with an amendment that would broaden the provisions of the Act of December 4, 1967 (81 Stat. 531) to include State and local government entities. This law now authorizes the Secretary, when making exchanges of land to public school districts under the General Exchange Act of 1922, to accept cash for a portion or all of the value of the selected Federal property. The section is apparently intended to authorize exchanges with State and local governments that involve cash equalization. We concur with the section but propose an amendment that more clearly states its desired purpose. The authority provided in this section would not be limited to the specific types of National Forest System lands generally addressed in S. 705. All land exchanges with States, counties, municipal governments and public school districts would be affected by this section. We suggest this section be moved to the end of the bill to help avoid confusion between it and other provisions of the bill.

The amendments I have proposed and others of a lesser nature have been provided to the Committee staff.

To conclude, we strongly support S. 705 and urge prompt Senate action on the bill. It would be an important addition to our authorities to manage the lands of the National Forest System. It would help reduce costs of land conveyances, disputes with adjoining landowners, and possible litigation.

That concludes my prepared statement. I would be pleased to answer the Subcommittee's questions or explain our proposed amendments in greater detail.

STATEMENT OF GENE S. BERGOFFEN, ASSISTANT VICE PRESIDENT, RESOURCE PROGRAMS, NATIONAL FOREST PRODUCTS ASSOCIATION

I am Gene Bergoffen, Assistant Vice President, Resource Programs, for the National Forest Products Association. Headquartered in Washington, D.C. NFPA is a federation of twenty-nine regional, product and species associations and fifteen

direct member companies. NFPA represents the growers, manufacturers, and wholesale distributors of solid wood products throughout the United States.

We appreciate this opportunity to give you the views of the forest products industry on S. 705.

We concur with the objectives of the legislation. There has long been a need for a simple means to exchange or sell lands that are impractical and uneconomical to manage. S. 705 addresses this issue and provides a convenient approach to accomplish this purpose by authorizing use of a quitclaim deed.

We have some suggested amendments, which are outlined in the attachment to this statement. These amendments are technical and clarifying in nature.

The forest industry supports an active program of land exchange between various owners, public and private, to alleviate problems resulting from the scattered pattern of land ownership. Such exchanges should be carried out in a way that assures efficient management including access to and full productivity of forest lands. S. 705 is designed to do just that.

S. 705, with some amendments, will promote good land stewardship on the national forests and reduce the administrative burdens of mixed ownership.

This concludes our statement and we will be glad to answer any questions you may have.

AMENDMENTS TO S. 705 PROPOSED BY THE NATIONAL FOREST PRODUCTS ASSOCIATION

1. Page 2, lines 10 and 11. Delete the following: "including protection of the scenic, wildlife, and wilderness values of the National Forest System". This language duplicates the preceding phrase which authorizes the Secretary to insert any covenants, conditions, and reservations necessary to ensure protection of the public interest.

2. Page 3, lines 6-7 currently state: "Parcels of ten acres or less which are encroached upon by improvements, occupied or used under claim or color of title by persons to whom no advance notice was given that the improvements encroached or would encroach upon such parcels, and who in good faith relied upon an erroneous *Federal survey title search* or other land description indicating *survey title search* or other land description indicating that there was not such encroachment" (emphasis added).

This section should be amended to include surveys done by non-federal parties in addition to Federal surveys by adding the following words "or non-federal" after the word Federal in lines 6 and 7 of page 3.

3. Page 3, Section 3. This section should be amended to recognize the value that the private parties may have made to road rights-of-way. This can be accomplished by adding the following language to Section 3, line 24: "The Secretary may, in cases which the Secretary determines it would be consistent with the public interest, reduce the cost of the parcel to be conveyed by an amount equal to the value of any improvements to rights-of-way that have been made by the purchaser."

STATEMENT OF CHARLENE WARD, CO-OWNER, ALAMOGORDO ABSTRACT AND TITLE COMPANY, ALAMOGORDO, N. MEX. AND GUARANTY ABSTRACT AND TITLE CO., RUIDOSO, N. MEX.

My name is Charlene Ward. Since 1965, my husband, Al Ward, and I have been the owners of Alamogordo Abstract and Title Co. in Alamogordo, New Mexico, and Guaranty Abstract and Title Company in Ruidoso, New Mexico.

In addition, I am president-elect of the New Mexico Land Title Association and I serve on the Public Land Survey Steering Committee of concerned New Mexicans that is addressing the very serious problem created by federal land survey difficulties in our state.

Serving with me on the Steering Committee are:

Dorsey Bonnell, our chairman, who is an artist and property owner;

State Senator Charlie Lee, a rancher;

Former State Senator Aubrey Dunn, who is business manager for the Alamogordo Daily News and who currently is a candidate for the office of governor of our state;

Otero County Commissioner Bill Mershon, who is manager of engineering services for Otero Country Electric Co-op;

Otero County Surveyor Quinton Daniel, who is president of Daniel Engineering Company;

Wayne Stewart, president, First National Bank, Alamogordo.

In appearing here today, I want to affirm for the record the strong support of the New Mexico Land Title Association and the Public Land Survey Steering

Committee for S. 705, a bill which would greatly ease the difficulties and the threat to our system of private land ownership arising from the current federal survey situation.

The overall problem has been well described by Senator Domenici in his remarks concerning S. 705 published in the March 12, 1981, Congressional Record. In work by the Forest Service and the Bureau of Land Management to retrace the original General Land Office survey for certain section and township corners in Lincoln National Forest, delays and discrepancies between new surveys and old surveys and boundaries—and inaccuracies in long-standing surveys brought out by new laser survey technology—have been followed by unexpected changes in boundaries and loss of privately owned land and improvements. Land owners have suddenly been placed in the position of defending their titles and boundaries that were perfected previously when their property was acquired by using the best available licensed surveyors and information. Land titles have become clouded for privately-owned real estate located near Lincoln National Forest, and this threatens to make re-sale difficult if not impossible.

The Forest Service has been quoted as estimating that as many as 90,000 title claims could emerge from similar survey problems in public land areas among various states. While this figure provides an idea of the potential magnitude of the difficulty, the most sobering assessment of damage is in the effects on land owners who have relied on the integrity of our system of real estate transfer.

For instance, the federal survey retracing places the private land owner in a no-win situation when his boundary is moved and a fence is involved. If, for exmple, a boundary line is moved 60 feet along the edge of a full section of land and the owner declines to buy the property back from the federal government, he still must move his fence to the new boundary at his expense. For a 3-strand barbed wire fence, the cost for doing this on flat land would be in the neighborhood of $5,000. So the owner loses either way: he buys land back for which he already has perfected title or he pays for moving his fence.

One victim owns a small farm adjacent to Lincoln National Forest Land in the southern part of the state. Initial boundaries were established in the 1880s—long before the first surveys—and the owner laid out boundaries to the best of his ability after initial survey work finally was done. Following the recent federal survey retracing, the owner was advised that his orchard and plowed fields within the bottom of a canyon are public land and that he now owns a tract of similar size on a rugged, brush-laden hillside.

Another example is provided by Aubrey Dunn, the former state senator serving on the Steering Committee, who sold mountain farm land he owned to a subdivider after survey work to perfect title dating back to the farmer who owned the property in 1935 and updated in the 1950s. Without Mr. Dunn's knowledge or permission, a private surveyor contracted by the Forest Service came upon his property within his fences and previously surveyed lines—and placed monuments of the private surveyor along a line cut within the land. Mr. Dunn then was faced with a clouded title to land he had sold under contract after he previously had perfected title.

In my home county of Otero and neighoring Lincoln County—as well as in Socorro and San Juan Counties—I personally know of more than three dozen instances in which private property owners are experiencing difficulty because of this federal survey activity. Without relief such as is provided for in S. 705, this number can be expected to increase steadily as the survey retracing continues. My detailed knowledge varies from case to case, but here is a listing of areas where there are cases known to me. If desired, I will try to secure more detail on specific instances as requested.

Two of these cases are especially vivid in memory and clearly illustrate the deeply troubling impact of the retracing problem on innocent property owners who have perfected their land titles in good faith.

As the result of moving a corner marker in Piney Woods Subdivision, Otero County, the owners of some 300 subdivision homes face a distressing land title situation. All are affected by having newly designated boundary lines. Among the one and one-half acre lots in the subdivision, some are 60 feet wide and the boundary change threatens more than 10 owners of these with loss of their homes or property unless they buy the real estate back from the federal government.

In Glenco, Hondo Valley, Lincoln County, the retracing threatens to completely take away the water from a rancher who has owned a large cattle ranch there for some 30 years. Without water, a cattle ranch becomes a desert.

Here are some of the other areas in Otero, Lincoln, Socorro and San Juan counties that are being severely affected by the retracing. Property involved includes homes, farms, ranches, resorts, and business and commercial use.

In Otero County, there is the Sacramento area, lower Fresnal Canyon, the El Paso YMCA, Haynes Canyon, Karr Canyon, Nelson Canyon, the old Walker place, upper Fresnal Canyon, James Canyon, Hyatt Canyon, LaLuz Canyon, Tucker Canyon, Aqua Chiquita Canyon, Penasco Canyon, Sixteen Springs Canyon and the Village of Cloudcroft.

In Lincoln County, there are business and commercial areas at Fox Cave, Hondo Valley.

In San Juan County, a number of serious problems are emerging around the City of Farmington.

And, there are residential and farming areas with serious problems in Socorro County.

Based on my knowledge of these current cases, I would estimate that about 80 percent of them could be cleared up if S. 705 were enacted as introduced. Of particular interest here is Section 2, part 2 of the bill which would authorize the Secretary of Agriculture to sell or exchange, by quitclaim deed, all right, title and interest of the United States in and to National Forest System lands in parcels of 10 acres or less—which are encroached upon by improvements occupied or used under claim or color of title by persons to whom no advance notice was given that the improvements encroached or would encroach upon such parcels, and who in good faith relied upon an erroneous federal survey, title search or other land description indicating there was not such encroachment.

I appreciate this opportunity to present testimony at these hearings and I shall be pleased to furnish additional information as requested to the best of my ability.

STATEMENT OF ROSEMARIE J. CRAVEN, WASHINGTON REPRESENTATIVE, NATIONAL INHOLDERS ASSOCIATION

I am Rosemarie Craven, Washington Representative of the National Inholders Association. I would like to thank the committee for this opportunity to testify in support of S. 705.

In the past months I have worked on several inadvertent trespass cases. The nature of these cases makes them extremely complex. On one hand, we have a family or individual, who has purchased property in good faith. This land is often acquired with the aide of legal counsel and title insurance has been purchased. Several years may transpire before legal title is questioned, during this time the family will have developed strong emotional and cultural ties. The frustration that ensues upon notice of trespass causes such cases to be clouded and highly charged.

In working with the Forest Service I have realized that though the agency representative is often portrayed as the villian, he is frequently as frustrated with the inflexibility as the land owner. I was appalled to find that there are an estimated 50,000 such cases nationally.

These parcels of land are scattered throughout the system. They are typically separate, isolated units having special management problems which hamper efficient administration.

Present authorities including the General Exchange Act of March 20, 1922, are not adequate to handle the unique nature of these tracts or they impose procedural requirements so great that the costs become prohibitive. Administrative remedies, such as special use permits do not provide a satisfactory long term solution for either the land owner or the Agency.

Only two means are currently available to resolve such encroachment administratively. A special use permit can be granted for a specified period, after which the permit would expire and the improvements would be removed. Or, a land exchange can be made whereby the owner exchanges other private land for the Federal land encrouched upon. Neither of these means offers a practical solution to the problem and the costs to the government are quite high. The only other alternative is a private relief bill, which is cumbersome, time consuming and expensive.

This bill would expedite Forest Service handling of cases of good faith occupancy. The authority would be limited to situations where the private party had no advanced knowledge that his improvements encroached upon National Forest lands. We believe that disposal, subject to the provisions of this bill, would be in the best interest of the United States.

To summerize, we regard S. 705 as an important addition to the authorities of the Forest Service. It will help reduce the costs of land conveyances, disputes with adjoining landowners and possible litigation.

For the purpose of expedience I will not take hearing time to recount "horror stories". I am sure each member of the committee has encountered such cases within his own state and been confronted with the difficulties of satisfactory resolution. This Congress is faced with a backlog of legislation and a plethora of issues of

national significance and concern. Private relief legislation can not be a viable alternative. In the 96th Congress over 14,000 bills were introduced of those less than 700 became law. This single piece of legislation before us offers an alternative, an in-house administrative remedy. I urge this committee to expedite the passage of this legislation, it is in the best interest of all concerned principals.

I have included for the record and as part of my own testimony a statement by Barbara Benz Krauss daughter of Dr. Charles Benz, owner of a small log cabin in the Inyo National Forest. Mrs. Krauss relates the difficulties encountered by her family in attempting to gain clear title to the cabin property. As family representative, she expresses their support of S. 705.

Thank you.

OCTOBER 20, 1981.

DEAR SENATORS: This is the personal testimony of the Benz family which strongly requests your support of Bill 705. The Benz Cabin is one which would greatly benefit by the passage of this small tract legislation. Without it we would eventually lose our cabin.

The cabin is one of the oldest structures in Mammoth Lakes, California. It is a 50 year old authentic log cabin, complete with wood burning stoves, yet lacking the modern conveniences of water and electricity. It is located in a remote section of Mammoth and is basically inaccessable and primitive, therefore blending into the surrounding forest perfectly. Since the time of the cabin's construction in 1931 and today there has been minimal human impact to the local environment. Improvements have been restricted to maintenence only and therefore it has remained a wilderness retreat, as was originally intended.

We are founding members of what is now the Mammoth County Water District and have always paid property taxes and continue to do so.

The cabin is very special and vital to our family. It is used year around as our vacation retreat as well as our private sanctuary which enables us to escape from civilization and frustrations. It is the spot where the family gathers from around the country to recapture shared memories of our childhood summers spent there together. It is also where future memories of wonderful times are being created for us and now for our children. The cabin has become a tradition with us, a primary source of many of our most happiest times.

The cabin was built in 1931, and our parents purchased it in good faith in 1956, complete with title insurance. Not quite twenty years later (1971) we were informed by the USFS that the cabin was in trespass on USFS property. Due to a 1969 BLM survey, it was determined that the previous boundary lines (of 1928) were in error and that the property our cabin is on no longer belonged to us. We were shocked and outraged to learn that an error made by surveyors over 50 years ago could result in the loss of the cabin our family cherishes. Under this new survey, we still own a small strip of property but it's approximately 100 feet from where the cabin lies. And, it's not as if our privately owned cabin is an island amidst USFS property; the disputed property is only a relatively small area within a larger privately owned section.

To resolve what even the USFS calls our innocent trespass, has cost us incredible amounts of time, money and grief. After 10 years we are still struggling. Initially the USFS wanted the cabin vacated and removed but after much negotiation a non-renewable term use permit was offered to us. However, it was contingent upon our signing a quit claim deed and removing the cabin at the end of the term.

In our struggle to find an equitable resolution we have made countless business trips to Mammoth, Bishop, Bridgeport, Los Angeles, San Francisco and Sacramento. We have sought legal counsel from seven or eight different attorneys and have consulted with several U.S. Congressmen. We have called various surveyors, talked to assessors and have begun title searches. We have been in constant written and oral communication with the USFS—the district and regional rangers as well as appeals to the Chief of Forest Service in Washington, D.C. We have sought the advice and support of the National Inholders Association. We have even considered a private relief bill. However, the only option that appears to be open to us that will grant us clear title to our cabin is for the passage of the small tract legislation. We feel that such legislation will provide a remedy for situations like ours where innocent victims will receive restitution. To us, it would be the reasonable and equitable solution we have been searching for over the past ten years.

In closing, though a number of proposals have been discussed as a means for resolving our innocent trespass, none have adequately taken into account our strong personal attachment to this cabin that was bought in good faith almost 30 years ago. These very strong ties as well as the cabin itself have become part of our family's heritage. We passionately want to preserve it by retaining the cabin so as to pass it on to our future generations. It has been impossible to work out an

agreement that recognizes these factors. So once again, the Benz family urges you to support this Bill which would enable our traditions to continue.

With much appreciation.

BARBARA BENZ KRAUSS.
DR. AND MRS. CHARLES C. BENZ.
CHRISTOPHER BENZ.
CARL BENZ.
GARY BENZ.
CHARLENE BENZ.

II

97TH CONGRESS
1ST SESSION

S. 705

To authorize the Secretary of Agriculture to convey certain National Forest System lands, and for other purposes.

IN THE SENATE OF THE UNITED STATES

MARCH 12 (legislative day, FEBRUARY 16), 1981

Mr. DOMENICI introduced the following bill; which was read twice and referred to the Committee on Agriculture, Nutrition, and Forestry

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A BILL

To authorize the Secretary of Agriculture to convey certain National Forest System lands, and for other purposes.

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled, That the Secretary of Agriculture (hereinafter referred to as the "Secretary") is authorized, when the Secretary determines it to be in the public interest—

(1) to sell or exchange, by quitclaim deed, all right, title and interest of the United States in and to National Forest System lands described in section 2; and

(2) to accept, as consideration for the lands sold or exchanged, other lands, interests in lands, or cash payment, or any combination of such forms of consideration, equal in value to the fair market value of the lands, including the mineral estate, sold or exchanged by the Secretary.

The Secretary shall insert in any such quitclaim deed such terms, covenants, conditions, and reservations as the Secretary deems necessary to ensure protection of the public interest, including protection of the scenic, wildlife and wilderness values of the National Forest System and provision for appropriate public access to and use of lands within the System.

SEC. 2. The National Forest System lands which may be sold or exchanged under this Act are those the sale or exchange of which is not practicable under any other authority of the Secretary and which are—

(1) parcels of forty acres or less which are interspersed with or adjacent to mineral patents, which are determined by the Secretary, because of location or size, not to be subject to efficient administration, and which have a fair market value, as determined by the Secretary through appraisal within one year before or after the date application for sale or exchange is made to the Secretary, of not more than $150,000;

(2) parcels of ten acres or less which are encroached upon by improvements occupied or used under claim or color of title by persons to whom no advance notice was given that the improvements encroached or would encroach upon such parcels, and who in good faith relied upon an erroneous Federal survey, title search or other land description indicating that there was not such encroachment; and

(3) road rights-of-way, reserved or acquired, which are substantially surrounded by lands not owned by the United States and which are no longer needed by the United States, subject to the first right of abutting landowners to acquire such rights-of-way.

SEC. 3. Any person to whom lands are conveyed pursuant to this Act shall bear all reasonable costs of administration, survey and appraisal incidental to such conveyance, as determined by the Secretary, except in those cases in which the Secretary determines that it would be consistent with the public interest to waive payment of such costs by such person. In the case of road rights-of-way conveyed pursuant to this Act, the person to whom the right-of-way is conveyed shall reimburse the United States for the value of any improvements to such right-of-way which may have been made by the United States.

SEC. 4. Conveyance of any road rights-of-way under this Act shall not be construed as permitting any designation, maintenance, or use of such rights-of-way for road or other purposes except to the extent permitted by State or local law and under conditions imposed by such law.

SEC. 5. In carrying out the land exchanges authorized in this Act the Secretary is authorized to use the procedures of the Act entitled "An Act to facilitate exchanges of land under the Act of March 20, 1922 (42 Stat. 465), for use for public schools, and for other purposes", approved December 4, 1967 (Public Law 90–171; 81 Stat. 531).

SEC. 6. For purposes of this Act, the word "person" includes any State or any political subdivision or entity thereof.

SEC. 7. The Secretary shall issue regulations to carry out the provisions of this Act, including specification of—

(1) criteria which shall be used in making the determination as to what constitutes the public interest; and

(2) factors relating to location or size which shall be considered in connection with determining the lands to be sold or exchanged under clause (1) of section 2.

SEC. 8. Nothing in this Act shall authorize conveyance of Federal lands within the National Wilderness Preservation System.

STAFF EXPLANATION OF S. 705

S. 705 (DOMENICI)—CONVEYANCE OF CERTAIN NATIONAL FOREST SYSTEM LANDS

Section 1 of this bill would authorize the Secretary of Agriculture, when in the public interest, to sell or exchange, by quitclaim deed, all rights, title, and interest of the U.S. in certain National Forest system lands. As consideration for such lands the Secretary could accept other land, interests in lands, or cash, equal in value to the fair market value of the land. The Secretary shall include such terms and conditions in the deed as are necessary to protect the public interest and to provide for access to lands within the National Forest System.

Section 2 would define, as lands which may be sold or exchanged under this bill, the following: (1) parcels of 40 acres or less interspersed with or adjacent to mineral patents, which the Secretary determines are not sbject to efficient administration, and which have a fair market value of no more than $150,000; (2) parcels of 10 acres or less that are encroached upon by improvements occupied or used by persons who in good faith, and without advance notice that the improvement would encroach upon the parcel, relied upon an erroneous Federal survey, title search, or other land description; and (3) road rights-of-way that are substantially surrounded by lands not owned by the U.S. and which are no longer needed.

Section 3 would require that persons receiving land conveyed or sold under this authority bear reasonable costs of administration, survey and appraisal incident to the conveyance, except that the Secretary can waive payment of these costs if he determines that a waiver is in the public interest. Persons receiving conveyance of any rights-of-way must reimburse the U.S. for the value of any improvements thereon.

Section 4 would provide that the conveyance of any rights-of-way does not permit any use inconsistent with State or local law.

Section 5 would allow the Secretary to use the procedures in P. L. 90-171 in connection with the conveyance of land under this authority.

Section 6 would include any State or any political subdivision or entity thereof within the meaning of the word person.

Section 7 would require the Secretary to issue regulations to carry out the provisions of this bill. The regulations should include criteria to determine what constitutes the public interest and should specify factors relating to size or location to be considered in determining which lands should conveyed.

Section 8 would provide that nothing in this bill authorizes conveyance of Federal lands within the National Wilderness Preservation System.

DEPARTMENT OF AGRICULTURE,
OFFICE OF THE SECRETARY,
Washington, D.C., October 21, 1981.

Hon. JESSE HELMS,
Chairman, Committee on Agriculture, Nutrition and Forestry,
U.S. Senate, Washington, D.C.

DEAR MR. CHAIRMAN: As you requested, here is our report on S. 705, a bill "To authorize the Secretary of Agriculture to convey certain National Forest System land, and for other purposes," and on S. 160, a bill "To authorize the Secretary of Agriculture to convey certain National Forest System lands, under specified conditions, to direct the Secretary of the Interior to certify survey monuments within one hundred and eighty days, and for other purposes."

The Department of Agriculture recommends that S. 705 be enacted with our proposed amendments in lieu of S. 160.

S. 705 would authorize the Secretary of Agriculture to sell or exchange certain National Forest System lands at fair market value when the Secretary determines it to be in the public interest. A quitclaim deed would convey the land sold or exchanged and would contain terms, covenants, conditions and reservations necessary to protect the public interest, including public access to other National Forest System lands. Any conveyance could be made to a State or political subdivision of a State as well as to private parties.

The lands which would be sold or exchanged are of three types: (1) tracts of 40 acres or less interspersed with or adjacent to patented mineral claims which cannot be efficiently administered and which have a fair market value of not more than $150,000; (2) parcels of 10 acres or less which are encroached upon by improvements occupied or used by persons who relied upon an erroneous Federal survey, title search or land description and who had not been given advance notice that their improvement would encroach upon the Federal land; or (3) road rights-of-way, either

reserved or acquired, substantially surrounded by privately owned lands and which are no longer needed by the United States.

S. 705 would require persons receiving these lands to bear the costs of conveyance unless waived by the Secretary. Conveyance of road rights-of-way would require reimbursement to the United States by the recipient for the value of any improvements. The abutting landowners would be given the first opportunity to acquire the road rights-of-way. The bill would prohibit conveyance of any Federal lands within the National Wilderness Preservation System.

S. 160 is a more limited bill and would only address a small part of the concerns on which S. 705 is based. We have included, as part of our supplemental statement, a detailed analysis of S. 160 and our reasons for supporting S. 705 with amendments rather than S. 160.

S. 705 would provide authority to convey three types of small, irregularly shaped tracts of National Forest System land. These are typically separate, isolated units having special management problems which impair efficient administration. Present authorities, including the General Exchange Act of March 20, 1922, are not adequate to handle the unique nature of these tracts. Administrative remedies, such as special use permits, do not provide a satisfactory long-term solution. S. 705, with the amendments we recommended, would provide authority to more efficiently administer National Forest System lands.

The mineral fractions are residual Federal lands remaining after the patenting of mineral claims in the western States over the last century. Due to the manner in which the claiming occurred, the residual lands are of an infinite variety of sizes and shapes. Many of these lands came under the administrative responsibility of the Forest Service upon creation of the National Forests. Most of these lands are no longer held for their mineral values and are of little practical use for National Forest System purposes. We believe that the $150,000 limitation imposed by S. 705 should apply not only to mineral fractions but to the other two types of tracts as well. We also believe the term "mineral patents" should be clarified to refer to those lands transferred out of Federal ownership under the mining laws.

Encroachment, or good faith trespass, upon National Forest System land occurs when improvements are constructed or are being used on a parcel of land acquired in good faith by a private party but which is later found to overlap Federal land. This overlap may occur due to an improper property line survey or an error in the title or land description. This has happened when private lands adjoining public lands are subdivided and sold. The trespass would be considered good faith if the private party had no knowledge that the improvements would encroach upon the Federal lands. The bill would limit these cases to those caused by erroneous Federal surveys. We believe this is unnecessarily limiting and would not allow us to deal with cases where erroneous private surveys cause encroachment. There are few known instances where a Federal survey error led to encroachment. On the other hand, there are an estimated 50,000 title claim cases existing on National Forest System lands—a large number of which involve good faith trespass due to faulty private surveys. These occur throughout the United States. These are generally of small size, most involve less than 1 acre. We recommend that S. 705 be broadened to include encroachment cases that occur as a result of private surveys. We believe that such cases should be limited to a maximum size of 5 acres. This limit would encompass about 95 percent of the cases. Cases involving larger tracts should require more detailed consideration before disposal.

The road rights-of-way exist as narrow strips of Federal land through private land. Most were created as exceptions to homestead patents in order to provide access to the homesteaded area or to the remaining public lands. Some were purchased by the Government in conjunction with the work of the Civilian Conservation Corps. Many of the roads no longer exist or were never built. The average size of the strips is 2 acres. They occur in the West, especially in Montana, Wyoming, Idaho and Arizona.

We also wish to offer an amendment that would broaden the scope of the bill to include a different type of land transfer. This involves the interchange of land and would be in addition to the bill's provision to sell or exchange certain National Forest System lands. Interchange as proposed here would be a special form of land transfer similar to exchange in which, for example, a landowner who might be involved in an occupancy trespass situation on adjoining Federal lands, could agree with the Federal Government to interchange titles to the small parcel of Federal land being occupied and a similar parcel of private lands which he owns. The simple transaction, with conveyances at approximate value, would clear up the encroachment situation and would avoid the more costly and time consuming process normally associated with exchange. The expense to the landowner would be the cost of survey, if any, and deed preparation and filing. We would envision interchange as a

supplement to the regular land exchange process, applicable to some of the cases encompassed by S. 705.

We also propose an amendment that would require the Secretary to consult with the Secretary of the Interior when conveying National Forest System lands under the provisions of this bill that contain leasable minerals in known or designated energy and mineral resource areas.

The Secretary would be directed to issue regulations to implement the bill, including specification of what constitutes the public interest and guidelines relating to disposal of mineral fractions. We recommend this direction be broadened to require a definition of and the process for determining "approximate value."

Section 5 of S. 705 would permit the Secretary of Agriculture to use the provisions of the Act of December 4, 1967, (81 Stat. 531) to carry out exchanges authorized by the bill. This broadening of the 1967 Act is apparently intended to authorize exchanges of National Forest System land with State and local government entities in addition to the present authority for public school districts where cash equalization of payment by the local government is made. The section's intent is not clear and we propose an amendment that more clearly states its desired purpose. The authority provided by this section would not be limited to the specific types of National Forest System lands encompassed by S. 705. All land exchanges with States, counties and municipal governments, in addition to those with public school districts, would be affected by this section. We suggest the section be moved to the end of the bill to indicate this broader applicability.

The bill does not address the question of surveys of the tracts to be conveyed. Surveys of certain National Forest System lands covered by S. 705 would be carried out by the Department of the Interior, Bureau of Land Management. The Department of Agriculture, Forest Service, may perform certain of these surveys through authority delegated by the Bureau in March 1980 Memorandum of Understanding.

Our recommended amendments are shown in the enclosed supplemental statement.

No additional appropriations would be required to administer the provisions of S. 705 nor would additional personnel be needed.

The Office of Management and Budget advises that there is no objection to the presentation of this report from the standpoint of the Administration's program.

Sincerely,

JOHN R. BLOCK, *Secretary.*

Enclosure.

USDA SUPPLEMENTAL STATEMENT S. 160/S. 705

ANALYSIS AND DISCUSSION OF S. 160

S. 160 would authorize the Secretary of Agriculture to convey under specified conditions certain National Forest System lands to private parties when determined to be in the public interest. Federal lands which would be conveyed are limited to parcels of 5 acres or less which are encroached upon by improvements placed there by private parties who had not received advance notice that the encroachment would occur. Further, the private party's encroachment upon the Federal land was caused by reliance on either an erroneous Federal land survey or an uncertified Federal survey marker. Section 2 of the bill requires that all monuments established through survey of the public lands by the Department of the Interior or an agency designated by that Secretary to make such surveys (which we would interpret to include the Forest Service) be certified within 180 days after monumentation occurs. Certification would involve meeting all requirements and conditions for survey and monumentation and filing appropriate information in the proper land office.

It is our understanding that introduction of S. 160 was prompted by a specific case on the Lincoln National Forest at Cloudcroft, New Mexico. The Bureau of Land Management, acting at the request of the Forest Service, began a resurvey of a portion of the National Forest boundary in 1967, established property lines and erected corner monuments to replace those of the public land survey established in the 19th century but not found at the time of resurvey. This survey was temporary in that it was not recorded and the monumentation not certified. Ten years later, the Bureau of Land Management, seeking to complete the 1967 survey, found the original survey monuments which were in a different location than those of the 1967 survey. The Federal surveyors then removed the 1967 survey monuments. In the 1967–1977 period, however, private surveyors used the temporary, uncertified monuments to survey private lands adjoining the National Forest Boundary. These surveys were the basis for subdivision and sale of the private lands. Subsequently,

privately owned improvements have been erected on this land which are now considered to be encroaching upon Federal land.

The problem to which the bill is directed is real but of very limited application. There are very few known instances where an incomplete Federal land survey has caused an incorrect private survey and subsequent encroachment upon Federal land. Errors in private surveys which lead to encroachment on Federal land by private landowners are of a far more common occurrence. We estimate that of the 50,000 title claim cases on National Forest System lands, a major portion involve good faith occupancy due to errors in private surveys, land descriptions or titling. S. 705, if amended as we recommend, is directed at this larger problem, and would be of much greater value, we believe. It would encompass the type of situation to which S. 160 is directed. It would enable us to expeditiously resolve, through administrative means, these problems. At present such problems require the issuance of special use permits or private relief legislation. We recommend enactment of S. 705 with our amendments in lieu of S. 160.

RECOMMENDED AMENDMENTS TO S. 705

1. On page 1, line 8, change the semicolon to a colon and insert the following proviso: *Provided,* That the Secretary shall consult with the Secretary of the Interior prior to conveying leasable minerals in known or designated energy and mineral resource areas;".

2. On page 2, line 18, delete "mineral patents" and insert "lands which have been transferred out of Federal ownership under the mining laws".

3. On page 2, line 20, substitute a semicolon for the comma after "administration" and delete the remainder of clause 1 of section 2. On line 16, after "Secretary", insert ", which have a value as determined by the Secretary of not more than $150,000,".

4. On page 3, line 1, delete "ten" and insert "five".

5. On page 3, line 6, delete "Federal".

6. On page 3, line 17 substitute a period for the comma following "Secretary", delete "except" and insert "The Secretary may,". Move the sentence beginning on line 20 and ending on line 24 to line 17 to follow "Secretary". On line 19 insert a comma after "interest" and delete "to". On line 20 substitute a comma for the period after "person" and insert "or reimbursement for the value of improvements to rights-of-way otherwise required by this section."

7. On page 4, move section 5 to the end of the bill, renumber as section 8, and revise as follows—

"Sec. 8. The Act of December 4, 1967, (81 State. 531) is amended by inserting before the phase 'public school district' wherever it appears, and before the phrase 'public school authority' the second time it appears, the words 'State, county, municipal government or'."

Renumber sections 6, 7, and 8 as sections 5, 6, and 7.

8. On page 4, line 12, insert "(a)" after "Act,", change the period to a comma at the end of the sentence and add the following new subsection:

"(b) the term 'interchange' means a land transfer in which the Secretary may exchange titles with a person to land in their respective ownerships, subject to the discretion of the Secretary under such regulations as the Secretary may prescribe as to appraisal, survey, notice, and other procedures applicable to exchanges."

To insure consistency between this amendment and other provisions of the bill, the following technical changes should be made:

On page 1, line 6, insert a comma after "sell", delete "or" and insert "or interchange" after "exchange,".

On page 2, line 1, insert a comma after "sold", and on line 2 delete "or" and insert "or interchanged," after "exchanged".

On page 2, lines 4–5, delete the words "equal in value to the fair market value of the lands, including the mineral estate sold or exchanged," and insert "which, in the case of conveyance by sale or exchange. is at least equal in value, including the mineral estate, or, in the case of conveyance by interchange, is of approximate value, including the mineral estate, to the land being conveyed". On page 1, line 7 insert ", including the mineral estate," after "interest".

On page 2, line 14 insert a comma after "sold", delete "or" and insert ", or interchanged" after "exchange". Also on line 14 insert a comma after "sale" and delete "or" the second time it occurs. On line 15 insert ", or interchange" after "exchange".

9. On page 4, line 20 renumber clause (2) as clause (3). On line 19, delete "and" and insert a new clause (2) as follows:

"(2) the definition of and the procedure for determining 'approximate value; and'."

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